UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

JASEN ALBRECHT and HEATHER ALBRECHT,	CIV. 4:20-cv-4065
Plaintiffs,	**COMPLAINT**
vs.	
TESLA TRANSPORT INC. and PEACE EXPRESS, INC.,	
Defendants.	

COME NOW Plaintiffs, Jasen Albrecht and Heather Albrecht, by and through their undersigned attorney, and for their Complaint against the Defendants Tesla Transport Inc. and Peace Express, Inc. (collectively referred to herein as "Defendants"), state, allege and aver as follows:

SUBJECT MATTER JURISDICTION AND VENUE

1.   Jasen Albrecht and Heather Albrecht ("Albrechts") are residents of Beadle County, South Dakota.

2.   Defendant Tesla Transport Inc. ("Tesla") is an Illinois corporation, with a principal address in Lincolnwood, Illinois.

3.   Defendant Peace Express, Inc. ("Peace Express") is an Illinois corporation, with a principal address in Buffalo Grove, Illinois.

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4. Upon information and belief, Tesla and Peace Express were at all times material hereto engaged in the business of interstate transportation of freight, including honey bees and hives and related equipment and supplies.

5. Complete diversity of citizenship exists between Albrechts and Defendants, the amount in controversy exceeds Seventy-Five Thousand Dollars ($75,000.00); therefore, and subject matter jurisdiction therefore exists pursuant to 28 U.S.C. §1332.

6. Subject matter jurisdiction also exists pursuant to 49 U.S. §14706 (d).

7. This action involves damage and loss of Albrechts' property while in transit pursuant to an interstate shipping contract, part of which was fulfilled in in Beadle County, South Dakota, and involves a rollover semi-truck and trailer accident that occurred in Meade County, South Dakota. Venue is therefore proper in this Court.

CLAIM FOR DAMAGES UNDER 49 U.S.C. §14706
"CARMACK AMENDMENT"

8. Tesla advertises itself as a motor carrier that provides interstate transportation of honey bees and related equipment and supplies and advertises that it provides cargo insurance to covers any loss of such property equipment and supplies, including live honey bees. A copy of Tesla's advertisement is attached as Exhibit A.

9. Tesla represented to Albrechts, before Albrechts contracted with Tesla for the interstate shipment of its property, that Tesla would provide cargo insurance that fully covered any loss or damage to the subject property, equipment or supplies, including the loss of live honey bees.

10. Based upon Tesla's advertisements and its representations, Albrechts

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contracted with Tesla for the interstate shipment of several loads of their honey bees, hives and related equipment and supplies in November, 2019.

11.   Tesla invoiced Albrechts for the transportation of ten (10) loads of their honey bees, hives and related equipment and supplies. An eleventh (11) load was not invoiced, but was to be transported under the same terms. Copies of the invoices are attached as Exhibit B.

12.   At no time did Albrechts ever agree to a stated value of their property less than the full and total amount, including the value of their live honey bees.

13.   Upon information and belief, Tesla contracted with Peace Express for the transportation of some of the loads of Albrechts' honey bees, hives and related equipment and supplies.

14.   Albrechts made payment by separate check drafted on their bank account to Tesla for each loaded, even when Albrechts' property was loaded onto trucks and trailers owned or operated by Peace Express's employees or agents.

15.   On or about November 10, 2019, a load of Albrechts' honey bees, hives and related equipment and supplies were loaded onto a truck and trailer owned or operated by Peace Express, at Albrechts' place of business in Beadle County, South Dakota. This load is reflected in Tesla invoice No. 1019.

16.   While transporting this load of Albrechts' honey bees, hives and related supplies and equipment, a driver employed by Peace Express or acting as its agent and under its authority as an interstate motor carrier, negligently overdrove the wintery road

conditions, negligently failed to maintain control of the commercial vehicle that he was operating, left his lane of travel, and caused the semi-truck and trailer that he was operating to overturn and roll, on or near a curve on Highway 34 in Meade County, South Dakota ("the subject accident"). A true and correct copy of the accident report is attached as Exhibit C.

17.   A significant part of the load, comprised of hives, honey bees, and related equipment and supplies owned by Albrechts was badly damaged or destroyed as a result of the subject accident, as depicted in photos taken at the accident scene, copies of which are attached as Exhibit D.

18.   Tesla's agent contacted Albrechts, advised them of the subject accident, and assured them that their loss of property would be fully covered and compensated.

19.   Peace Express, however, contacted Jasen Albrecht and advised that the value of the live honey bees was not covered by its cargo insurance, while assuring the Albrechts that their beehives, honey bees and related equipment and supplies salvaged from the wreck would be returned to them at their place of business in Beadle County, South Dakota so that the property could be properly inventoried, preserved and protected, and that they would be fully compensated for their loss.

20.   Peace Express, through its agent, further advised Albrechts to stop payment on the checks that Albrechts had written in payment of the Tesla invoices and indicated that the unpaid sum of these invoices should be credited against Albrechts' claim for loss and damage.

21.   Upon information and belief, Peace Express salvaged some of Albrechts' honey bees, beehives and related equipment and supplies from the wreckage at the accident site, but instead of returning Albrechts' property to them, Peace Express and/or Tesla or their employees or agents transported the property or caused them to be transported illegally to an unknown, undisclosed out-of-state location, without Albrecht's knowledge or permission or the requisite permission of the Department of Agriculture, and converted Albrechts' property.

22.   Despite Albrechts' requests and demands, Peace Express and Tesla have refused to disclose the location of Albrechts' property salvaged from the wreck and the subject accident site, and have refused to return their property to them.

23.   As a direct and proximate result of the negligence of Peace Express and the resulting damage to Albrechts' property, and Peace Express and Tesla's refusal to return the salvaged property to Albrechts, Albrechts have been unable to fulfill a pollination contract with an almond producer in California, a contract that would have generated income of Seventy-Five Thousand Four Hundred and Eighty Dollars ($75,480.00) for Albrechts.

24.   Albrechts gave written notice of their claim to Tesla and Peace Express, within ninety (90) days of their loss, and demanded payment for the full amount of the value of their property.

25.   Despite notice and demand, Tesla and Peace Express have refused to pay Albrechts or compensate them for the total sum of their resulting damage and loss.

26. Peace Express instead issued a draft made payable to Jasen Albrecht in the sum of One Hundred Thousand Dollars ($100,000.00), including the following note in the memo of the draft: "Paid in full – 408 double deep hives claimed a total loss per Jasen Albrecht." Albrechts have refused to accept this inadequate sum and have retained possession of the uncashed check, although Peace Express has advised that it has stopped payment on the same. A copy of the draft issued by Peace Express is attached as Exhibit E.

27. Tesla and Peace Express are liable to Albrechts for the full value of the honey bees, hives and related equipment and supplies destroyed, damaged or lost as direct and proximate result of the negligence of Peace Express, its employee or agents, or the acts of Tesla and/or Peace Express following the subject accident.

28. Albrechts have suffered and sustained damage in the amount of the full value of their honey bees, beehives, equipment and supplies, a total sum of Two Hundred Eight-Two Thousand, Six Hundred and Seventy-Eight Dollars and Eighty-Two Cents ($282,678.72).

29. Tesla invoiced Albrechts a total sum of Forty-Three Thousand Nine Hundred and Sixty-Seven Dollars ($43,967.00).

30. Albrechts wrote eleven (11) checks, each in the amount of Three Thousand Nine Hundred and Ninety-Seventy Dollars ($3,997.00), in payment of the Tesla invoices; however, only three of these checks were cashed and cleared the bank prior to the subject accident and Albrechts' stop-payment orders to its bank. Albrechts paid a total sum of

Eleven Thousand Nine Hundred and Ninety-One Dollars ($11,991.00) on the Tesla invoices, leaving a total net sum of the invoiced amounts of Thirty-One Thousand Nine Hundred and Seventy-Six Dollars ($31,976.00).

31.   After applying a credit for the total remaining sum due on the Tesla invoices, without inclusion of the amount of Invoice 1019 related to the wrecked load at issue, Albrechts are owed a total net sum of Two Hundred Fifty-Four Thousand Six Hundred and Ninety-Nine Dollars and Seventy-Two Cents ($254,699.72).

32.   Tesla and Peace Express are liable to Albrechts in this amount, pursuant to and in accordance with 49 U.S.C. §14706(a).

WHEREFORE, Albrechts pray for relief as follows:

1. For an award of damages and judgment in the sum of $254,699.72.

2. For prejudgment interest;

3. For additional damages as may be awarded for the unlawful conversion of Albrechts' property.

4. For an award of such other fees and costs as may be recovered under the law.

5. For such other and further relief as is deemed just and equitable in the premises.

Dated April 15, 2020.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

/s/ Steven J. Oberg
Steven J. Oberg
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Sioux Falls, SD 57104

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Attorney for Plaintiffs

JS 44 (Rev. 09/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
JASEN ALBRECHT and HEATHER ALBRECHT

DEFENDANTS
TESLA TRANSPORT INC. and PEACE EXPRESS, INC.

(b) County of Residence of First Listed Plaintiff   Beadle
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant   Cook
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Steven J. Oberg
Lynn, Jackson, Shultz & Lebrun, P.C. - 110 N. Minnesota Ave., Ste. 400
Sioux Falls, SD 57104 - (605) 332-5999

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government
Plaintiff
- ☐ 2 U.S. Government
Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff*
(For Diversity Cases Only)   *and One Box for Defendant)*

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	**PERSONAL INJURY** ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	**PERSONAL INJURY** ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability **PERSONAL PROPERTY** ☐ 370 Other Fraud ☐ 371 Truth in Lending ☒ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 **PROPERTY RIGHTS** ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV
REAL PROPERTY	**CIVIL RIGHTS**	**PRISONER PETITIONS**	**LABOR** ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act	**SOCIAL SECURITY** ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) **FEDERAL TAX SUITS** ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 850 Securities/Commodities/ Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/ Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	**Habeas Corpus:** ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty **Other:** ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement	**IMMIGRATION** ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions		

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding   ☐ 2 Removed from State Court   ☐ 3 Remanded from Appellate Court   ☐ 4 Reinstated or Reopened   ☐ 5 Transferred from Another District *(specify)*   ☐ 6 Multidistrict Litigation - Transfer   ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. § 1332, 49 U.S.C. § 14706
Brief description of cause:
Damage and loss of property while in interstate transit

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.   DEMAND $ CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes   ☒ No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE _____   DOCKET NUMBER _____

DATE   4-14-2020

SIGNATURE OF ATTORNEY OF RECORD   *[signature]*

FOR OFFICE USE ONLY

RECEIPT # _____   AMOUNT _____   APPLYING IFP _____   JUDGE _____   MAG. JUDGE _____